

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE SHEET)	
METAL WORKERS HEALTH CARE PLAN OF)	
NORTHERN CALIFORNIA; SHEET METAL)	No. 08-3103 SC
WORKERS PENSION TRUST OF NORTHERN)	
CALIFORNIA; SHEET METAL WORKERS)	<u>DEFAULT JUDGMENT</u>
LOCAL 104 VACATION, HOLIDAY)	
SAVINGS PLAN; ANTHONY ASHER,)	
TRUSTEE,)	
)	
Plaintiffs,)	
)	
v.)	
)	
T A M S, Inc., a California)	
corporation, d/b/a THERMAL AIRE,)	
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Before the Court is the Motion for Default Judgment ("Motion") submitted by Plaintiffs Board of Trustees of the Sheet Metal Workers Health Care Plan of Northern California, et al., ("Plaintiffs"). Docket No. 24. Defendant TAMS, Inc., d/b/a Thermal Aire ("TAMS"), was duly notified of these proceedings. See Docket No. 4 ("Certificate of Service"). An Entry of Default as to TAMS has been filed. Docket No. 10. For the reasons stated herein, the Court GRANTS Plaintiffs' Motion.

II. BACKGROUND

Plaintiffs contend that TAMS is bound by the terms and

1 conditions of a collective bargaining agreement. Canevari Decl.¹
2 ¶ 2, Ex. 1 ("Labor Agreement"). The collective bargaining
3 agreement, and the Employee Retirement Income Security Act of 1974
4 ("ERISA"), authorize a collection action for unpaid employee
5 benefit contributions. See Docket No. 1 ("Compl.") at 2-4. The
6 Labor Agreement allows an assessment of ten percent (10%) of the
7 delinquent contributions as liquidated damages. Maraia Decl.² ¶
8 3; Labor Agreement at 24-25. Amendment Number Three to the Trust
9 Agreement provides for liquidated damages at a rate of 20%.
10 Maraia Decl. ¶ 4, Ex. 3 ("Trust Agreement").

11 On or about March 26, 2008, Lindquist LLP, Certified Public
12 Accountants, completed a compliance test of the books and records
13 of TAMS for the period July 1, 2004 through June 30, 2007.
14 Hallenbeck Decl.³ ¶ 3, Ex. 2 ("Audit"). The amount of unpaid
15 contributions uncovered by the audit was \$6413.57. Audit at 4.
16 \$4000 was paid on June 24, 2009, leaving a delinquent balance of
17 \$2413.57. Maraia Decl. Ex. 4 ("Liability Detail Sheet"). The fee
18 for the compliance test was \$641.36. Id. As a result of the
19 delinquent contributions that remain due, and late payments of
20 contributions by TAMS between May and September 2008, TAMS
21 allegedly owes Plaintiffs liquidated damages in the amount of
22 _____

23 ¹ Dennis Canevari, business representative of Sheet Metal
24 Workers Local Union No. 162, submitted a declaration in support of
the Motion. Docket No. 25.

25 ² Bonnie Maraia, fund manager of Plaintiffs' administrator,
26 submitted a declaration in support of the Motion. Docket No. 27.

27 ³ Tim Hallenbeck, a manager with the firm Lindquist LLP, filed
a declaration in support of the motion. Docket No. 26.

\$30,020.80, and interest in the amount of \$842.37. Id.

III. LEGAL STANDARD

After entry of default, the Court may enter a default judgment. Fed. R. Civ. P. 55(b)(2). The Court's decision whether to enter a default judgment, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980), is guided by several factors. If the court determines service of process was sufficient, the court may consider:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977).

IV. DISCUSSION

A. Eitel Factors

Accepting the allegations in the Complaint, the Court finds that the Eitel factors favor default judgment. Section 502(a) of ERISA gives the participants and beneficiaries of an ERISA-governed pension plan a cause of action in federal court

1 where an employer violates the terms of the plan. 29 U.S.C. §
2 1132(a)(1)(B), (a)(3). Plaintiffs have shown that, by failing to
3 make timely contributions, TAMS has violated the terms of the
4 Agreement. Mot. at 3. Plaintiffs are seeking damages of
5 \$33,918.10 for contributions still due, liquidated damages,
6 interest, and a testing fee. See Liability Detail Sheet. Despite
7 being notified of these proceedings, TAMS has not challenged these
8 amounts.

9 TAMS's default cannot be said to be the result of excusable
10 neglect. TAMS was properly served. See Certificate of Service.
11 While it is preferable to decide cases on the merits whenever
12 possible, this preference is not dispositive. Where a party fails
13 to defend against a complaint, as TAMS has failed to do here, Rule
14 55 authorizes the Court to enter default judgment. Kloepping v.
15 Fireman's Fund, No. 94-2684, 1996 U.S. Dist. LEXIS 1786, at *10
16 (N.D. Cal. Feb. 14, 1996).

17 **B. Remedy**

18 Plaintiffs seek to recover contributions still due,
19 liquidated damages, interest, a testing fee, attorneys' fees, and
20 court costs. Mot. at 1-2. The Trust Agreement sets liquidated
21 damages at 20% of the amount of the delinquent payment, and they
22 are assessed as of the delinquency date. See Trust Agreement,
23 Item III § C, Amendment Number Three. The liquidated damages
24 amount to \$30,020.80. See Liability Detail Sheet.

25 Plaintiffs seek interest for the days during which payments
26 were late between May and September 2008, Mot. at 3, and they are
27 contractually entitled to such interest, see Trust Agreement Item
28

1 III § C. The interest rate is set by the Board of Trustees, see
2 id., and the current rate is 15%, see Carroll Decl. ¶¶ 7-8, Ex. 7
3 ("Ways & Means Committee Meeting Minutes"). Interest is computed
4 from the contribution due date. Maraia Decl. ¶ 9. Plaintiffs
5 seek \$842.37 in interest payments. See Liability Detail Sheet.

6 Plaintiffs request attorneys' fees under 29 U.S.C.
7 § 1132(g)(2)(D). Mot. at 5. Plaintiffs have submitted a
8 description of their attorneys' fees and court costs totaling
9 \$1170. Carroll Decl. ¶¶ 2-5. Plaintiffs are entitled to the
10 testing fee under the terms of the Trust Agreement. See Trust
11 Agreement, Item III § E. The testing fee is \$641.36. See Audit.
12 The Court GRANTS Plaintiffs' request for damages consisting of
13 contributions still due, liquidated damages, attorneys' fees,
14 court costs, and a testing fee.

15
16 **V. CONCLUSION**

17 For the foregoing reasons, the Court GRANTS Plaintiffs
18 default judgment. The Court hereby AWARDS Plaintiffs \$2413.57 for
19 contributions still due, liquidated damages of \$30,020.80,
20 interest of \$842.37, plus \$1170.00 in attorneys' fees and costs,
21 and \$641.36 for the testing fee, for a total judgment of
22 \$35,088.10.

23
24 IT IS SO ORDERED.

25
26 Dated: December 14, 2009

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28 UNITED STATES DISTRICT JUDGE